THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.5395 OF 2005

O R D E R:

This writ petition has been filed by P.Pratibha Bharati, with a prayer to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in purporting to consider the petitioner as having been indulged in malpractice in examination and in taking away her hall ticket No.051449874 and thereby preventing her from taking further examinations as being illegal, arbitrary, unconstitutional and consequently direct the respondents to drop all the charges against her and permit her to appear for all examinations and scrutinize the same and re-conduct the examination in Botany Paper.

The petitioner was a student of Senior Intermediate for the academic year 2004-2005. While she was taking Botany examination on 15.03.2005, certain forbidden material was found in her possession and therefore, the Chief Superintendent seized her answer book and informed the same to the Flying Squd and thereupon, the answer book of the petitioner came to be seized. Immediately, the petitioner rushed to this Court by filing this writ petition on the same day itself. An interim order came to be passed on 16.03.23005. The interim order reads as follows:

> *"The specific case of the petitioner is that on 15.03.2005 while she was writing the Botany Examination, the Flying Squad visited and found a sheet of 'Civics' paper near her table.*
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> *However, the learned Standing Counsel appearing for the Board of Intermediate Education, under instructions, states that as a matter of fact printed material pertaining to Botany Paper-II was found by the Flying Squad.*
>
> *The question whether the petitioner is guilty of the alleged malpractice or not requires to be decided after due enquiry after affording a reasonable opportunity to the petitioner to rebut the*

allegations. However, the question is in the meanwhile whether the petitioner can be permitted to appear for the further examinations.

Having regard to the facts and circumstances, I am of the view that the balance of convenience is in favour of the petitioner and that it would be appropriate to permit her to appear for the further examinations, so that she will not be deprived of the academic year in case ultimately in the enquiry it is found that she is not guilty of alleged malpractice.

Accordingly, there shall be interim directions as prayed for. However, the result of the petitioner shall not be declared until further orders.

It is made clear that this order is without prejudice to the enquiry that may be conducted by the Board against the petitioner and that this shall not entitle the petitioner to claim any equities."

Counter affidavit has been filed by the respondents. One R.P.Sisodia has sworn to the counter affidavit. It is stated in the counter affidavit that on 15.03.2005, the Flying Squad found the forbidden material inside the answer book of the petitioner and booked her under malpractice as per the Board Rules and collected the Hall Ticket and answer book of the petitioner. It is further stated in the counter affidavit that an enquiry was conducted and the Malpractice Scrutiny Committee decided that the malpractice indulged in by the petitioner comes under Item No.2 of the Regulations of the Board framed under Section 9 of the Intermediate Education Act and accordingly imposed punishment of expulsion from the Examination Hall and debarment for rest of the examinations. I deem it appropriate to refer the following relevant portion of the counter affidavit:

"*It is submitted that the Petitioner indulged in malpractice on 15th March 2005. The examination was between 8-00 A.M. to 11.00 a.m. The examination which the petitioner was taking was Botany Paper-II. The petitioner filed the above Writ Petition in this Honourable Court. The said Writ Petition which was moved as "Lunch Motion" in this Honourable Court came up for admission on 16th March 2005. When the matter was taken up for admission, the Convener for Intermediate Public Examinations March 2005, Medak District, who was informed about the writ petition, sent instructions to the office of*

the Board of Intermediate Education, informing the Board that the petitioner while writing Botany paper was found possessing printed material pertaining to Botany Paper-II i.e., Examination, which she is taking. The same was also brought to the notice of this Hobourable Court at the time of admission. Subsequently, the Chief Superintendent reported that the forbidden material found with the petitioner was not properly verified, signed by the Flying Squad and it related to Civics Paper".

Heard the learned counsel for the petitioner and the learned Senior Counsel appearing for the first respondent.

The learned counsel appearing for the petitioner submits that the material which the flying squad has found near by the table relates to the Civics paper and the forbidden material is not in any way relates to Botany paper and therefore, the action initiated by the first respondent Board is not legal and proper.

The learned Standing Counsel appearing for the first respondent submits that the report of the Chief Superintendent clearly shows that the forbidden material, which is seized from the possession of the writ petitioner, relates to Botany subject. He further submits that the statement of the writ petitioner also indicates that the forbidden material came to be seized from her possession after 10-50 a.m., on 15.03.2005. He placed on record the statement recorded by the writ petitioner and also the fax message sent by the Convener, D.E.C. B.I.E. IPE., March 2005, dated 16.03.2005 before the Court for perusal. There is enough material available on record to show that the forbidden material relates to Botany paper and thereby warrants initiation of proceedings for the malpractice committed by the petitioner. Therefore, the first respondent cannot be found fault for initiating the proceedings under Malpractice Rules.

However, since final orders have been passed by the first respondent Board, the petitioner is at liberty to challenge the same. Giving liberty to the petitioner, the writ petition is dismissed.

The learned counsel for the petitioner submits that the copy of the final order has not been served on her. It is stated in the counter affidavit that proceedings were communicated to the Officer, Medak District with a request to inform the Principal. In such a situation, the petitioner is at liberty to obtain the copy of the final order from the Principal of the concerned College. No costs.

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B.SESHASAYANA REDDY J.,

Dt.23.08.2005

c.c.in one week

B/O

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